

1. **Parties.** This is a contract for services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Medsolutions, Inc. d/b/a eviCore Healthcare (hereafter called "Contractor"). The Contractor's form of business organization is a corporation. The Contractor's address is 400 Buckwalter Place Blvd., Bluffton, SC 29910. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is services generally on the subject of Utilization Management services for evidence based case and utilization management of diagnostic radiology imaging. Additionally, this contract's subject matter entails providing assistance for Medicaid plans in the evidence-based review and improvement of patient safety. Detailed services to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$537,600.
4. **Contract Term.** The effective date of this agreement shall be July 1, 2017 and end on June 30, 2018. Upon mutual agreement by both Parties, this agreement may be amended for up to three (3) additional one-year terms.

Work performed between July 1, 2017 and the signing or execution of this agreement that is in conformity with Attachment A may be billed under this agreement. The Contractor agrees that in exchange for consideration of the option to bill for services performed, all terms and conditions described in this agreement shall apply to any and all services performed for or on behalf of the State. The Contractor agrees that by submitting invoices, bills, or otherwise seeking compensation for services performed prior to the finalization of this agreement or signing of this agreement, the Contractor is agreeing to the application of all terms of this contract to that period and to that work. The Contractor further agrees to defend, indemnify, and hold the State harmless for any claim, dispute, non-contractual cost or charge, or any liability whatsoever, whether in law, equity, or otherwise, which arises from or is connected to the work performed prior to the execution of this agreement. The Contractor further agrees that these terms apply regardless of whether the work is accepted by the State, and regardless of whether payment is issued by the State to the Contractor for the work in question.

5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office is required.

Approval by the Secretary of Administration is required.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Contacts and Notices:** The contacts for this award are as follow:

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>	<u>For the Contractor</u>
Name:	Meaghan Kelley	Daljit Clark	Melba Price

Phone #: 802-241-0393

802-879-5915

573-680-1907

E-mail: Meaghan.Kelley@vermont.gov

Daljit.Clark@vermont.gov

Melba.Price@evicore.com

To the extent notices are made under this agreement, such notices shall only be effective if committed to writing and sent to the following persons as representatives of the parties:

CONTRACTOR:

General Counsel
700 Cool Springs Rd, 8th Floor
Franklin, TN 29910
Philip.Clark@evicore.com

STATE:

DVHA Legal Unit
Department of Vermont Health Access (DVHA)
NOB 1 South, 280 State Drive
Waterbury, VT 05671-1010
AHS.DVHALegal@vermont.gov

Written notices may be sent by electronic mail except for the following notices, which must be sent by United States Postal Service certified mail: termination of contract, contract actions, damage claims, breach notifications, alteration of this paragraph.

8. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 30 days in advance. Notwithstanding this provision, if a governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this contract are provided, is not in compliance with State and Federal law or is operating with deficiencies the State may terminate this contract immediately and notify the Contractor accordingly. Also, in the event that federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract with no obligation to pay the Contractor from State revenues.
9. **Subcontractor Requirements:** If the Contractor chooses to subcontract work under this agreement, the Contractor must first fill out and submit the Subcontractor Compliance Form (Appendix I – Required Forms) to seek approval from the State prior to signing an agreement with a third party. Upon receipt of the completed Subcontractor Compliance Form, the State shall review and respond with approval or request additional information if needed within 5 business days. Approval of a subcontract may be contingent upon the State's review of the proposed subcontract agreement. The Contractor shall be fully responsible for any work completed by its contractors and consultants. All work performed by subcontractors and consultants is subject to all conditions and requirements included in this Agreement. The Contractor shall notify the State when utilizing the Subcontractor Compliance Form upon renewal of any subcontract.

Under no circumstance may the Contractor enter into a sub-agreement related to work performed under this Agreement without prior authorization from the State. The Contractor shall submit the Subcontractor Compliance Form to:

Meaghan Kelley, Contract Manager: Meaghan.Kelley@vermont.gov

Should the status of any third party or Subcontract change, the Contractor is responsible for updating the State within fourteen (14) calendar days of said change.

9. **Attachments.** This contract consists of 38 pages including the following attachments, which are incorporated herein:

Attachment A - Specifications of Work to be Performed
Attachment B - Payment Provisions
Attachment C – Standard State Provisions for Contracts and Grants
Attachment D - Modifications of Customary Provisions of Attachment C or Attachment F
Attachment E - Business Associate Agreement

Attachment F - Agency of Human Services' Customary Contract Provisions
Appendix I – Required Forms
Exhibit I – Reporting Requirements
Exhibit II – Utilization Management Delegated Functions & Responsibilities

The order of precedence of documents shall be as follows:

- 1). This document
- 2). Attachment D
- 3). Attachment C
- 4). Attachment A
- 5). Attachment B
- 6). Attachment E
- 7). Attachment F
- 8). Other Attachments

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.

BY THE STATE OF VERMONT:

e-Signed by Cory Gustafson
on 2017-09-26 15:29:27 GMT September 26, 2017

CORY GUSTAFSON, COMMISSIONER DATE
AHS/DVHA
NOB 1 South, 280 State Drive
Waterbury, VT 05671-1010
Phone: 802-241-0246
Email: Cory.Gustafson@vermont.gov

BY THE CONTRACTOR:

e-Signed by Alan Poenitske
on 2017-09-25 13:29:24 GMT September 25, 2017

Alan Poenitske, CAO DATE
730 Cool Springs Blvd, Suite 800
Franklin, TN 37067
Phone: 615-468-4000
Email: Alan.Poenitske@eviCore.com

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED

The State arranges health care services for Medicaid beneficiaries eligible for services under Title XIX of the Social Security Act. The Contractor specializes in evidence-based case and utilization management of diagnostic radiology imaging services (hereafter called "Covered Health Services"). Additionally, the Contractor's specialties include providing assistance for Medicaid plans in the evidence based review of the Covered Health Services – this is designed to improve patient safety and increase quality through application of evidence based criteria, pursuant to the terms and conditions set forth in this Agreement. The Parties agree as follows:

I) DEFINITIONS

- a) **Applicable Law** means any and all Federal and Vermont statutes, rules, and applicable regulations to the activities of the State and Contractor in carrying out their respective duties and obligations as set forth in this Agreement.
- b) **CMS** means the Centers for Medicare and Medicaid Services, or any applicable successor Federal regulatory authority
- c) **Members** means all individuals living in Vermont who are entitled to State's coverage as a result of the individual's eligibility and who are duly enrolled in accordance with applicable enrollment requirements for services under Title XIX of the Social Security Act, or any waiver thereof.
- d) **Covered Health Services (CHS)** means outpatient, diagnostic, non-emergency radiology imaging health care services, including services designated by the appropriate Current Procedural Terminology (CPT) codes, for those services referenced in Section A below, as updated by the Contractor and State as necessary, that are benefits under the terms of a Member's Program or are otherwise required by Applicable Law to be benefits under a Member's Program.
- e) **Emergency medical condition** means the sudden and, at the time, unexpected onset of an illness or medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by the prudent layperson, who possess an average knowledge of health and medicine, to result in:
 - a. placing the member's physical or mental health in serious jeopardy; or
 - b. serious impairment to bodily functions; or
 - c. serious dysfunction of any bodily organ or part.
- f) **Emergency Services** means medical screening, examination, and evaluation by a physician or, to the extent permitted by Applicable Law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists and, if it does, the care, treatment, or surgery for a covered service by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of a hospital.
- g) **Government Agencies** means the Centers for Medicare and Medicaid Services ("CMS") or the State of Vermont, or any federal agency with authority over the State of Vermont and its subcontractors.
- h) **Medicaid Program** is a Federal-State program authorized in Title XIX of the Social Security Act (the Act). The program provides health coverage to low income citizens to gain access to needed

medical services. It is overseen by the applicable State Medicaid Agency and any procedures, benefits, terms and conditions, limitations, exclusions, requirements and other obligations to which Members and providers are subject thereunder.

- i) **Medically Necessary** (Medical Necessity) means health care services, including diagnostic testing, preventive services, and aftercare that are appropriate, in terms of type, amount, frequency, level, setting, and duration to the beneficiary's diagnosis or condition. Medically necessary care must be consistent with generally accepted practice parameters as recognized by health care providers in the same or similar general specialty as typically treat or manage the diagnosis or condition, and
 - a. help restore or maintain the beneficiary's health; or
 - b. prevent deterioration or palliate the beneficiary's condition; or
 - c. prevent the reasonably likely onset of a health problem or detect an incipient problem.

Additionally, for EPSDT-eligible beneficiaries, medically necessary includes a determination that a service is needed to achieve proper growth and development or prevent the onset or worsening of a health condition.

- j) **eviCore Services** means those services for which the Contractor is contracted to perform for the State, as described in this agreement.
- k) **Participating Service Provider ("PSP")** means a hospital, a physician, or any other health care practitioner or entity that has a direct or indirect contractual arrangement with the State to provide or make referrals for Covered Health Services with regard to the particular State department under which the Member is covered.
- l) **Program(s)** means the applicable Medicaid program offered or administered by the State, and the procedures, benefits, terms and conditions, limitations, exclusions, requirements and other obligations to which Members and providers are subject thereunder, as the case may be.
- m) **Parties** mean State and Contractor, collectively.
- n) **Party** means State and Contractor, as applicable.

II) CONTRACTOR OBLIGATIONS

- a) **eviCore Services.** The Contractor shall provide eviCore Services on the financial terms outlined in this Agreement. Contractor shall perform eviCore Services in accordance with the industry standards currently accepted in the radiological industry and under Applicable Law.
- b) **Standard and Character of Performance.** Contractor shall use customary and reasonable care and proper diligence in the performance of its services under this Agreement. It is understood and agreed by the Parties that the terms "customary and reasonable care and proper diligence" do not make the Contractor a guarantor of the correctness of any claims payments and other services performed under this Agreement, but refers to the usual business practice standards and conduct in such business.
- c) **Assistance.** Contractor shall maintain a toll-free telephone line and trained service and clinical personnel from 8:00 a.m. to 9:00 p.m. Eastern Time, Monday through Friday, excluding all State holidays, for pre-authorization and other inquiries regarding the eviCore Services.

- d) **Personnel Qualifications/Responsibilities.** Contractor shall utilize the following personnel in the performance of this Agreement:
- i. **Intake personnel** shall provide non-clinical support to the nursing staff and the parties agree that at no time shall intake personnel perform any medical necessity review; but they may obtain relevant information. Intake personnel shall be employed or sourced to Contractor through a "temp-to-hire" employment agency relationship.
 - ii. **Nursing Staff** shall consist only of the following:
 - 1. Registered or Licensed Practical Nursing Staff (hereinafter "Nursing Staff") shall participate in the performance of medical necessity reviews which result in the authorization of services based upon medical necessity criteria developed by the Contractor which are approved by the State. In addition, the Nursing Staff shall refer cases that do not meet the criteria for approval to a Medical Director for review. The Nursing Staff shall include only nurses that have graduated from an accredited nursing program with an appropriate diploma or certificate, associate's degree or bachelor's degree. Contractor shall only utilize Nursing Staff with un-restricted nursing licensure. Nursing staff and other non-M.D. clinical personnel shall be employed or sourced to Contractor through a "temp-to-hire" employment agency relationship. All clinical staff will perform inter-rater reliability tests to show consistency in clinical decision-making ability among clinical reviews.
 - 2. Only a Medical Director shall perform individual case reviews and issue denials as the result of such clinical review. Contractor's Medical Directors shall possess an unrestricted medical license and Board Certification and shall sign denial letters.
- e) **Communications.** Prior to distributing any announcement or communication to Participating Providers related to the eviCore Services (including but not limited to policy letters, provider manuals or procedure manuals), Contractor shall provide the State with copies of the proposed announcement or communication for the State's review and written approval, which such approval will not be unreasonably withheld. The State shall conclude a review of all material submitted for review hereunder within thirty (30) calendar days of receipt. In all matters pertaining to the performance of eviCore Services under this Agreement, Contractor, when it acts in reasonable good faith, may rely upon any notice, resolution, instruction, direction, order, certificate, opinion, letter or other document believed by it to be genuine and authorized by the State. Further, any communication regarding changes in the performance in the eviCore Services shall require thirty (30) calendar days advance written notice thereof from the State with the exception of those changes that are mandated by a Government Agency.
- f) **Hold Harmless.** Contractor will look solely to the State for compensation for eviCore Services. Contractor agrees that, in no event, including but not limited to non-payment by the State, insolvency, or breach of the Agreement, will Contractor directly or indirectly bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from or have any recourse against Members or persons other than the State acting on their behalf for Medically Necessary Covered Health Services provided pursuant to this Agreement and that Contractor will indemnify and hold harmless Member. The parties further agree that (1) this provision shall survive the termination of this Services Agreement regardless of the cause giving rise to termination and shall be construed to the benefit of the Members; and (2) this provision supersedes any oral or written contrary Agreement now existing or hereafter entered into between Contractor and any Member or persons acting on their behalf.
- g) **Independent Medical Judgment.** Nothing in this Agreement, including Contractor's participation in the quality management process, shall be construed to interfere with or in any way affect a health care provider's obligation to exercise independent medical judgment in rendering health care services,

including Covered Health Services, to Members. PSPs shall be solely responsible for the quality of services provided to Members. No provision of this Agreement shall be construed to interfere with PSPs' independent medical judgment or professional ethics. All decisions regarding the provision of health care services to Members shall be based on such Members' medical needs and shall be made by or under the supervision of licensed physicians. Utilization management decisions made by or on behalf of the State are benefit coverage decisions and shall not constitute the practice of medicine and shall not be construed to affect a Participating Provider's independent medical judgment regarding whether to render care to a Member.

III) STATE OBLIGATIONS

- a) **Payment.** Consistent with Attachment B to the Contract, the State shall pay Contractor the compensation provided for in this Agreement.
- b) **Eligibility.** State shall be responsible for collecting enrollment information and providing to Contractor information regarding who is eligible to receive benefits under the Program. Contractor may rely upon such lists in performing its duties hereunder. State will notify Contractor using its best efforts of any additions, changes, deletions, or modifications of Members as they occur. In an event where the State determines that a Member has become ineligible for their respective programs or is no longer eligible to be enrolled with State for any reason, State shall also notify Contractor as soon as practicably possible.
- c) **Credentialing** PSPs shall be credentialed and re-credentialed by State as required by its policies and procedures and applicable accreditation bodies and law. State shall notify Contractor of the termination or loss of credentialing of a PSP within ten (10) business days of such event.
- d) **Identifications.** Contractor will utilize the Member data file provided by the State to identify whether a Member belongs to the State's Medicaid Program.
- e) **Accuracy of Data.** State acknowledges that complete and accurate Member, provider and other data is essential to the appropriate provision of eviCore Services hereunder. State represents and warrants to the best of its knowledge that all such data provided to Contractor is accurate and agrees that any performance guarantees in this Services Agreement are contingent upon the accuracy of such data.
- f) **Technical Requirements.** Information data exchange is to be performed by State and Contractor, in support of Prior Authorization processing. The file formats, frequency of data exchange, and electronic communication method of data transfer shall be specified by the State and agreed to by the Contractor. The Contractor shall maintain a secure FTP site for system-to-system exchange of files. The State shall provide 30 days or more of notice to the Contractor of changes to data exchange requirements. The State (or its Medicaid system contractor) uploads files to Contractor's system for validation of specific data fields, during data capture for Prior Authorization Requests. These files will be refreshed by State via secure electronic communication, on a schedule to be established between the State and Contractor. Files sent by the State include one (1) daily Provider Enrollment File and one (1) complete daily Eligibility File. Additionally, one (1) bi-annual CPT file is sent to the Contractor. Incremental daily data capture authorization files are to be provided by Contractor to the State, for Prior Authorizations initiated and completed by the Contractor. The authorization files will be refreshed daily by Contractor via the same secure electronic communication method.

- g) **Provision of Requirements.** The State will notify Contractor of changes in State policies that impact the services provided by Contractor. Both parties agree to negotiate in good faith to amend this agreement when changes in policies and/or procedures occur in which the Contractor is required to comply pursuant to this agreement. If changes in State policies and procedures are unacceptable to Contractor, Contractor may terminate this Agreement upon thirty (30) calendar days written notice.
- h) **Appeals.** The State will conduct all appeals processes.
- i) **Benefit Determination.** The interpretation of the extent of the benefits to which any Member is entitled under a State health plan shall initially rest with Contractor. The Contractor shall interpret the benefit in question in accordance with State's direction. However, if Contractor's automated systems must be changed to accommodate State's direction, Contractor shall have thirty (30) calendar days from signature of the cost reimbursement amendment described below to make the change, and State shall pay the reasonable cost to Contractor of such change to Contractor's automated systems. Such costs will not be reimbursed by the State unless approved by the State, reduced to writing, and signed by both parties as an amendment to this agreement. Until these system changes can be implemented, Contractor may require ten (10) business days to put manual procedures in place for benefit determinations. To the extent that a change in benefit determination impacts the payment provisions of this contract, to the detriment of either party, State and Contractor agree to negotiate to adjust the monthly rate to accommodate such changes in benefit interpretation. Any negotiated changes to the payment provisions of this contract will only take effect when they are reduced to writing and signed by both parties as an amendment to this agreement.
- j) **Notice to Members.** Unless otherwise agreed to by the Parties, State shall notify Members of the existence of the eviCore Services and the Members' responsibilities thereunder, including, but not limited to, any preauthorization requirements for radiology, radiation therapy, or other services. State shall be responsible for translation and interpretation services as may be required by federal or state regulation or statute. Contractor shall not send materials, documents or notices to Members without prior approval by State.
- k) **Required Participation with Pre-certification.** Members shall be required to have Covered Health Services reviewed through the Utilization Management (UM) Program to be eligible for coverage. The State acknowledges that it is responsible for enforcing Medicaid UM procedure compliance by providers. Providers have been informed that they must submit a PA request for all imaging services that require a prior authorization from Contractor. Claims submitted without a authorization for a service that require a PA will result in a reimbursement denial.
- l) **Provider Assistance.** The State shall maintain a Provider Relations call center, which can be accessed by providers by calling 802-878-7871 or 800-925-1706 for out-of-state callers. The call center shall be available from 8 a.m. to 5 p.m. Eastern Standard Time to provide assistance to providers with questions related to eviCore Services. State will inform Contractor of any inquiries or complaints received by the DXC Provider Relations call center related to Contractor services.

A. COVERED HEALTH SERVICES AND SERVICE AREA

- 1) Covered Health Services shall include those services shown in the tables below. A list of CPT Codes for Covered Health Services will be provided by Contractor during the implementation of this Agreement. Contractor will provide updated CPT codes to State within 30 calendar days of additions or deletions to the CPT Code list being published. CPT codes will be updated annually as released by the American Medical

Society. Any updates to the codes will be submitted by the Contractor to the State for review and approval by the State before implementing.

Program
<p>Covered Health Services:</p> <p>The following outpatient high-tech imaging services require prior authorization (Per Medicaid Covered Services Rules 7405.2):</p> <p>Computed Tomography (CT) Computed Tomographic Angiography (CTA) Magnetic Resonance Imaging (MRI) Magnetic Resonance Angiography (MRA) Positron Emission Tomography (PET) Positron Emission Tomography-Computed Tomography (PET/CT)</p> <p>Cardiology Services:</p> <p>Advanced Imaging and Diagnostic Services</p> <ul style="list-style-type: none">• Stress Testing<ul style="list-style-type: none">○ Myocardial Perfusion Imaging (SPECT & PET)○ Stress Echocardiography• Cardiac CT & MRI• Echocardiography; Transthoracic, Transesophageal• Diagnostic Heart Catheterization

- 2) Non-covered services include: inpatient hospital services, services rendered in an Emergency Department of a hospital, interventional radiology procedures, radiology services obtained pursuant to an Emergency Room visit, radiology services obtained, ordered, or performed during an observation stay, services referred by or to a non-network provider by a PSP, prior authorization issued by State or Prior Authorization issued on behalf of State before the Effective Date of the Agreement, and all other outpatient diagnostic services other than those services shown in the table above on the applicable effective date including CPT Codes not on the list provided to Contractor by the State and as updated from time to time by Contractor.
- 3) The service area in which Contractor shall provide eviCore Services for Covered Health Services shall be the State of Vermont and all out of State network providers.

B. UTILIZATION AND NETWORK MANAGEMENT SERVICES

- 1) As further defined herein, services included in the eviCore Contract shall include:
 - a) Contractor will manage Hi Tech and Cardiology PA as specified in section A above, in accordance with timelines as defined by State and this Agreement.
 - b) Contractor will provide targeted education and support for Vermont providers and their staff. Support includes telephone inquiries, webinars and email contact.
 - c) Contractor will use evidence based guidelines to review medical necessity. Guidelines will be made available to providers thorough a secure website.
 - d) Contractor's providers will be available to VT Medicaid providers for Peer to Peer consultations.

- e) Notice of medical necessity determinations to members, facility providing imaging services and provider requesting the service will be provided by Contractor.
 - f) Delivery of service levels as described in Section C below.
- 2) Utilization management or pre-authorization description.
- a) Contractor will establish a UM Program that is consistent with State policies and procedures and collaborative with State as defined in this Agreement and in accordance with Utilization Review Accreditation Company (URAC) and/or National committee for Quality Assurance (NCQA) standards and Applicable Law. Contractor's UM Program shall seek to improve patient safety and increase the quality of care by determining that Covered Health Services referenced in Section A, above, to be provided to Members are appropriate and medically necessary.
 - b) Contractor shall be subject to a site review and evaluation of its UM Program on an ongoing basis as may be required by State.
 - c) Contractor shall maintain a written UM Program description which includes:
 - i) A description of Contractor's: 1) policies/procedures to evaluate medical necessity, 2) use of evidence – based medicine through use of nationally recognized criteria and information sources, including State's coverage determinations for Members; and 3) processes used to review and approve services or determine that they are not medically necessary;
 - ii) A description of Contractor's mechanism to update periodically the UM Program description and the UM Program's policies and procedures;
 - iii) A description of the roles and functions of Contractor's UM Program to include a definition of the roles and responsibilities of Contractor's UM Program staff;
 - iv) Criteria for clearly documenting and communicating to participating providers the quality and appropriateness of medical services;
 - v) An appropriate mechanism, such as inter-rater reliability assessments, for verifying the consistency of determinations made across physician and non-physician clinical reviewers;
 - vi) An appropriate mechanism for updating evidence based review clinical criteria annually and periodically, including the time of the update as specified in protocol or policy. The Contractor's criteria must be evidence based built on nationally accepted standards, peer reviewed literature and input from community physicians and academic institutions.
 - d) Contractor's UM Program decisions shall follow the timeframes set below. Contractor's UM Program policies and procedures shall clearly define the maximum time frames for UM program decisions. All UM Program decisions shall be completed within the timeframes outlined herein or shorter time as required to meet all applicable State requirements.
 - i) Contractor shall implement an appropriate mechanism to monitor and document timeliness of decisions that shall include:
 - (1) Fax/Mail: Documentation to show urgent requests are responded to within one (1) business day.
 - (2) Web Portal: The web portal must be available 7 days a week and 24 hours per day and shall be easily navigated. Where all information has been provided to demonstrate that the request meets clinical appropriateness guidelines, an approval will be instantaneous, meaning that the provider will see an approval within 4-5 minutes, unless evidence based guidelines indicate that further review is required. The Contractor shall provide documentation to show that seventy-five percent (75%) of requests are responded to within two (2) business days.
 - (3) Telephone: Where all information has been provided to demonstrate that the request meets clinical appropriateness guidelines, an approval will be instantaneous, meaning that the provider shall receive an approval within 4-5 minutes, unless evidence based guidelines indicate that

further review is required. Documentation to show ninety-eight percent (98%) of all requests are responded to within three (3) business days.

- ii) The State will monitor and analyze the Contractor's compliance with timeliness requirements, and the Contractor shall take action to meet or improve adherence to such requirements as the circumstances may require.
 - e) Emergent tests conducted in other than hospital emergency rooms will require the provider's submission of a retroactive PA request within 3 business days of the test.
 - f) Contractor shall provide State with a copy of its written UM Program description upon request.
 - g) Contractor shall maintain all applicable licensures and certifications required to perform the delegated utilization management activities.
 - h) Contractor shall maintain appropriate records with respect to UM Program activities as required by Applicable Law and this Agreement.
 - i) Contractor shall regard all clinical records of Members and any other records containing individually identifiable information with respect to Members as confidential and shall comply with all applicable federal and state laws and regulations regarding such records.
 - j) With respect to each request for medical services for which Contractor performs UM Program services hereunder, Contractor shall apply UM Program criteria taking into account the needs of the individual patient.
 - k) In connection with all UM Program activities hereunder, Contractor shall obtain all necessary information including pertinent clinical information, consult with the treating physician as appropriate, and document such efforts. All patient information gathered from the UM Program shall be confidential, shall not be disclosed to any third parties except as permitted by Applicable Law.
 - l) State shall cover medically necessary Emergency Services, as defined herein, without prior authorization.
 - m) Contractor shall have a full-time medical director who provides oversight of the UM Program and shall use board certified physician specialists to render all adverse determinations when a procedure is not Medically Necessary.
 - n) Non-clinical staff may utilize protocols and criteria approved by the medical director to collect relevant clinical and non-clinical information and shall not make medical appropriateness/necessity decisions.
 - o) Contractor may deploy its proprietary predictive modeling techniques in an attempt to prescreen which requested Covered Health Services are likely to be medically necessary or not medically necessary for the purpose of improving efficiency of State service for requesting providers.
 - p) Contractor shall prepare such periodic reports or other data as shown in Exhibit A relating to Contractor's UM Program. Additional reports that are not included in Exhibit A may be purchased by State for an additional fee.
- 3) Delegation for communication of medical necessity determinations and appeals.
- a) For each determination that a requested Covered Health Service is not medically necessary and is denied, Contractor will send a Notice of Decision (NOD) and document:
 - i) Who recommended denial and a detailed justification of the determination of the denial.
 - ii) That notice is provided to the Member and facility performing the service and the provider requesting the service.
 - iii) Notification of the determination to the Member, facility performing the imaging and provider requesting the imaging procedure, stating the specific reasons for the denial, a description of any

- additional material or information necessary to perfect the PA request for the procedure and why it is necessary, and a description of how to file an appeal
- b) Contractor will provide written or electronic notification of all approvals and adverse determinations of a Covered Health Service to the member, ordering provider and the facility providing the imaging procedure.
 - c) Contractor's form denial letter to requesting providers, facility providing the imaging and Members and any material change thereto will be mutually agreed upon by State and Contractor. The denial notice of decision must include members appeal rights. State shall administer the Member appeal process with respect to denial determinations hereunder. In connection with any such appeal, Contractor shall assist and cooperate with State and shall promptly provide all documentation requested by State. State or other governmental authority, as applicable, shall have final decision-making authority with regard to appeals of determinations hereunder.
 - d) Unless a different applicable timeframe is defined by statute or regulation, a requesting provider may request reconsideration of a denial of prior authorization within three (3) business days of the initial determination. The original physician reviewer or a Contractor-designated alternate physician reviewer will be available to participate in this discussion within one (1) business day of the request for reconsideration if desired by the requesting provider. The requesting provider may choose to provide additional clinical information in lieu of or in addition to a peer-to-peer discussion. The Medical Necessity of the request may be confirmed, based on additional information provided, or the denial upheld.
 - e) State shall retain responsibility for responding to Member appeals, inquiries, and complaints. Contractor shall notify State Member Services within two (2) business days of any appeal, complaint or grievance filed with Contractor by or on behalf of any Member.
 - f) Contractor agrees to comply with all standards, procedures, and timeframes set forth by State in carrying out any Medical Necessity determinations, reconsiderations, peer to peer discussions and appeal notifications to State. To the extent that any of the above is inconsistent with any applicable regulations, the applicable regulations control.
 - g) In the event that Contractor's policies and procedures are inconsistent with State regulations pertaining to Member or provider rights, the State regulations shall determine policies and procedures.
 - h) As stated herein, State shall deliver to Contractor, files concerning participating imaging providers. Contractor will participate in reasonable good faith to include for redirection of members to a participating rendering facility location in cases where a non-participating rendering facility is originally requested.

C. PERFORMANCE GUARANTEES

Contractor agrees to comply with Performance Standards related to performance of its duties and obligations under this Agreement.

- 1) Telephone Answer Speed.
 - (a) Guarantee: The telephone answer speed will result in eighty percent (80%) or more of the monthly average of daily calls being answered in thirty (30) seconds or less. If the telephone answer speed results in less than 80% of the monthly average of daily calls being answered within 30 seconds, the total eviCore Service Fee for the subsequent month(s) in which the telephone answer speed drops below 80% will face liquidated damages in the amount of \$1,000. The State shall reinstate full payment of the eviCore

Service Fee in the subsequent month after 80% or more of calls are answered by the Contractor within 30 seconds or less.

- (b) Measure: The telephone answer speed for Covered Health Services and related customer service calls will be monitored by Contractor and reported to the State quarterly by month. The answer speed will be based on Covered Health Services and related customer service calls received Monday through Friday from 8 a.m. to 5 p.m. EST and will measure the time between the selection of an option from the Contractor's automated attendant options until the phone is answered by a Contractor employee.

2) Telephone Abandon Rate.

- a) Guarantee: The telephone abandon rate will not exceed five percent (5%). If the daily telephone abandon rate exceeds 5%, the eviCore Service Fee for the subsequent month(s) in which the Telephone Abandon Rate exceeds 5% will face liquidated damages in the amount of \$1,000. The State shall reinstate payment of the full eviCore Service Fee in the subsequent month after the Contractor's telephone abandon rate drops to 5% or less.
- b) Measure: The telephone abandon rate will be monitored by Contractor and reported to the State quarterly by month. The telephone abandon rate shall be calculated as the percentage of total Covered Health Services and related customer service calls made during 8 a.m. to 5 p.m. EST that hang up or disconnect before the call is answered.

ATTACHMENT B PAYMENT PROVISIONS

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually performed as specified in Attachment A up to the maximum allowable amount specified in this agreement. State of Vermont payment terms are Net 30 days from date of invoice, payments against this contract will comply with the State's payment terms. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. The following provisions concern specific payment terms:

1. Contractor invoices shall be submitted no more frequently than monthly, but no later than quarterly, and shall include the number of cases requested and reviewed during the specified billing period and the total amount billed.
2. For the period of July 1, 2017 through June 30, 2018, the State shall pay the Contractor at the rate of \$18.53 per case requested and reviewed not to exceed a maximum amount of 20,000 cases, totaling \$370,600 for Radiology Services, and the State shall pay the Contractor at the rate of \$30.40 per case requested and reviewed for Cardiology Services, not to exceed a maximum amount of 5,000, totaling \$152,000. In the event that this maximum amount of cases is exceeded, Contractor shall be under no further obligation to provide eviCore Services in the absence of an amendment to this agreement.
3. The Contractor or State may contest an underpayment or overpayment under this agreement within a limit of one hundred eighty (180) calendar days from the date the payment was made due or accrued.
4. Any system changes that require programming or development will be billed to the State at a rate of \$150.00 per hour not to exceed 100 hours. Contractor must receive prior approval from the State, reduced to writing and signed by both parties, before performing any system changes that require programming or development. Contractor shall invoice the State after approval has been received and changes to the system have been made. The maximum amount allowable for these system changes during the term of this Agreement is \$15,000.
5. If the telephone abandon rate exceeds five percent (5%), the invoices for the subsequent month(s) will face liquidated damages in the amount of \$1,000. The State shall cease liquidated damages in the subsequent month after the Contractor's telephone abandon rate drops to 5% or less.
6. If the telephone answer speed results in less than eighty percent (80%) of all calls being answered in thirty (30) seconds or less, the total invoices for the subsequent month(s) will face liquidated damages in the amount of \$1,000. The State shall cease liquidated damages in the subsequent month after 80% or more of calls are answered by the Contractor within 30 seconds or less.
7. No benefits, expenses, or insurance will be reimbursed by the State.
8. Invoices should reference this contract number and be submitted to:
AHS.DVHAGrantsContracts@vermont.gov
9. The total maximum amount payable under this contract shall not exceed \$537,600.

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED JULY 1, 2016**

1. Definitions: For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with the Contract, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

A. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics,

which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Certification Regarding Use of State Funds: In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

24. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

25. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

26. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially

fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

27. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

28. Termination: In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

29. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

30. Termination Assistance: Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

31. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

32. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

(Revised 7/1/16 - End of Standard Provisions)

**ATTACHMENT D
MODIFICATION OF CUSTOMARY PROVISIONS
OF
ATTACHMENT C OR ATTACHMENT F**

1. By modifying Attachment C, Section 8 (Insurance) to add in Professional Liability Insurance:

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of **\$1,000,000** per occurrence, and **\$3,000,000** aggregate.

**2. Requirements in Attachment C are hereby modified by adding the following:
CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING**

1 For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party's possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

2 Confidentiality of Contractor Information. The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written

confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

3 Confidentiality of State Information. In performance of this Contract, and any exhibit or schedule hereunder, the Party acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq ("State Data"). In addition to the provisions of this Section, the Contractor shall comply with the requirements set forth in the State's HIPAA Business Associate Agreement attached hereto as Attachment E. Before receiving or controlling State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State.

State Data shall not be stored, accessed from, or transferred to any location outside the United States. The Contractor agrees that (a) it will use the State Data only as may be necessary in the course of performing duties or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information; (c) it will not publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State and that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the State's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract.

Contractor shall not access State user accounts or State Data, except in the course of data center operations, response to service or technical issues, as required by the express terms of this Contract, or at State's written request.

Contractor may not share State Data with its parent company or other affiliate without State's express written consent.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

3. Requirements of Section 13 in Attachment C is here by modified:

13. Records Available for Audit: The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for ten years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim,

or audit is started before the expiration of the ten-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

4. Requirements of Section 9 in Attachment F is hereby modified by adding the following:

Contractor Materials: Notwithstanding anything to the contrary stated elsewhere in this Agreement, Contractor does not convey and State does not acquire any right in Preexisting Contractor's Materials. State shall not reverse engineer, compile or assemble any aspect of the Preexisting Contractor's Materials. Preexisting Contractor's Materials shall mean all intellectual property, including, but not limited to, trademarks, copyrights, patents, licenses, software, data, logic, algorithms, know-how, documents, supporting policies and procedures and other intelligence associated with the predictive modeling, utilization review, and radiology benefits management capability of the Contractor being utilized by the Contractor to deliver services under this Agreement. Contractor Materials shall remain with the Contractor and shall not transfer to any third party, including, but not limited to the State of Vermont, by virtue of this Contract, any property right or license. Contractor's Intellectual property may only be used or duplicated with the express written consent of Contractor.

Approval:

Assistant Attorney General:

Date:

e-Signed by James Blum
on 2017-08-28 21:18:42 GMT

August 28, 2017

**ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement") is entered into by and between the State of Vermont Agency of Human Services, operating by and through its Department of Vermont Health Access ("Covered Entity") and Medsolutions, Inc. d/b/a eviCora Healthcare ("Business Associate") as of July 1, 2017 ("Effective Date"). This Agreement supplements and is made a part of the contract/grant to which it is attached.

Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 ("Privacy Rule"), and the Security Standards, at 45 CFR Parts 160 and 164 ("Security Rule"), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations.

"Agent" means those person(s) who are agents(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

"Breach" means the acquisition, access, use or disclosure of protected health information (PHI) which compromises the security or privacy of the PHI, except as excluded in the definition of Breach in 45 CFR § 164.402.

"Business Associate shall have the meaning given in 45 CFR § 160.103.

"Individual" includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

"Protected Health Information" or PHI shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Agency.

"Security Incident" means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.

"Services" includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR § 160.103 under the definition of Business Associate.

"Subcontractor" means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

2. Identification and Disclosure of Privacy and Security Offices. Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the

Covered Entity's contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying grant or contract with Covered Entity. The uses and disclosures of Business Associate are limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the underlying agreement. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 18 or, (b) as otherwise permitted by Section 3.

3.3 Business Associate shall be directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Covered Entity, and for impermissible uses and disclosures, by Business Associate's Subcontractor(s), of the PHI that Business Associate handles on behalf of Covered Entity and that it passes on to Subcontractors.

4. Business Activities. Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the Agreement requires the person or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

5. Safeguards. Business Associate, its Agent(s) and Subcontractor(s) shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate or its Subcontractor(s) shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate or its Agent(s) and Subcontractor(s) shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

6. Documenting and Reporting Breaches.

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

6.2 Business Associate shall provide Covered Entity with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other

available information that is required to be given to the affected individuals, as set forth in 45 CFR § 164.404(c), and, if requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it. Business Associate shall require its Subcontractor(s) to agree to these same terms and conditions.

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

6.4 Business Associate shall require, by contract, a Subcontractor to report to Business Associate and Covered Entity any Breach of which the Subcontractor becomes aware, no later than two (2) business days after becomes aware of the Breach.

7. **Mitigation and Corrective Action.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity. Business Associate shall require a Subcontractor to agree to these same terms and conditions.

8. **Providing Notice of Breaches.**

8.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate.

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

8.3 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to Covered Entity.

8.4 The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5)

contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.5 Business Associate shall notify individuals of Breaches as specified in 45 CFR § 164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business Associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. **Agreements with Subcontractors.** Business Associate shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the Business Associate Agreement it enters into with a subcontractor to Covered Entity upon request. Business associate may not make any disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

10. **Access to PHI.** Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR § 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

11. **Amendment of PHI.** Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.

12. **Accounting of Disclosures.** Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

13. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary of HHS in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

14. **Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by

Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 19.8.

14.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate the contract or grant without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under the contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

15. Return/Destruction of PHI.

15.1 Business Associate in connection with the expiration or termination of the contract or grant shall return or destroy, at the discretion of the Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this contract or grant that Business Associate still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI. Business Associate shall certify in writing for Covered Entity (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI. Business Associate is to provide this certification during this thirty (30) day period.

15.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI. This shall also apply to all Agents and Subcontractors of Business Associate.

16. Penalties. Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

17. Training. Business Associate understands that it is its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, Business Associate shall participate in AHS training regarding the use, confidentiality, and security of PHI, however, participation in such training shall not supplant nor relieve Business Associate of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

18. Security Rule Obligations. The following provisions of this section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

18.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

18.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and

Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

18.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or Subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than two (2) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

18.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

19. Miscellaneous.

19.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract/grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract/grant continue in effect.

19.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

19.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

19.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule, and the HIPAA omnibus final rule) in construing the meaning and effect of this Agreement.

19.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

19.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity even if some of that information relates to specific services for which Business Associate may not be a "Business Associate" of Covered Entity under the Privacy Rule.

19.7 Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI. Business Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.

19.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT/GRANT PROVISIONS

1. **Definitions:** For purposes of this Attachment F, the term "Agreement" shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term "Party" when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term "Party" shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term "Party" as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term "Party" shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.
2. **Agency of Human Services:** The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.
3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver*):

Inspection and Retention of Records: In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

Subcontracting for Medicaid Services: Notwithstanding any permitted subcontracting of services to be performed under this Agreement, Party shall remain responsible for ensuring that this Agreement is fully performed according to its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Party in connection with the performance of this Agreement, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Party must retain the authority to revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any requirement of this Agreement. Party shall make available on request all contracts, subcontracts and service provider agreements between the Party,

subcontractors and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

Medicaid Notification of Termination Requirements: Party shall follow the Department of Vermont Health Access Managed-Care-Organization enrollee-notification requirements, to include the requirement that Party provide timely notice of any termination of its practice.

Encounter Data: Party shall provide encounter data to the Agency of Human Services and/or its departments and ensure further that the data and services provided can be linked to and supported by enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: Party shall provide a security plan, risk assessment, and security controls review document within three months of the start date of this Agreement (and update it annually thereafter) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

4. Workplace Violence Prevention and Crisis Response *(applicable to any Party and any subcontractors and sub-grantees whose employees or other service providers deliver social or mental health services directly to individual recipients of such services):*

Party shall establish a written workplace violence prevention and crisis response policy meeting the requirements of Act 109 (2016), 33 VSA §8201(b), for the benefit of employees delivering direct social or mental health services. Party shall, in preparing its policy, consult with the guidelines promulgated by the U.S. Occupational Safety and Health Administration for *Preventing Workplace Violence for Healthcare and Social Services Workers*, as those guidelines may from time to time be amended.

Party, through its violence protection and crisis response committee, shall evaluate the efficacy of its policy, and update the policy as appropriate, at least annually. The policy and any written evaluations thereof shall be provided to employees delivering direct social or mental health services.

Party will ensure that any subcontractor and sub-grantee who hires employees (or contracts with service providers) who deliver social or mental health services directly to individual recipients of such services, complies with all requirements of this Section.

5. Non-Discrimination:

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by State of Vermont and/or federal funds.

Party further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. Employees and Independent Contractors:

Party agrees that it shall comply with the laws of the State of Vermont with respect to the appropriate classification of its workers and service providers as "employees" and "independent contractors" for all purposes, to include for purposes related to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party agrees to ensure that all of its subcontractors or sub-grantees also remain in legal compliance as to the appropriate classification of "workers" and "independent contractors" relating to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party will on request provide to the Agency of Human Services information pertaining to the classification of its employees to include the basis for the classification. Failure to comply with these obligations may result in termination of this Agreement.

7. Data Protection and Privacy:

Protected Health Information: Party shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this Agreement. Party shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: Substance abuse treatment information shall be maintained in compliance with 42 C.F.R. Part 2 if the Party or subcontractor(s) are Part 2 covered programs, or if substance abuse treatment information is received from a Part 2 covered program by the Party or subcontractor(s).

Protection of Personal Information: Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be used to distinguish or trace an individual's identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other personal or identifiable information that is linked or linkable to a specific person, such as date and place of birth, mother's maiden name, etc.

Other Confidential Consumer Information: Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

Data Breaches: Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal

information identified above within 24 hours of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

8. Abuse and Neglect of Children and Vulnerable Adults:

Abuse Registry. Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact through (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

Reporting of Abuse, Neglect, or Exploitation. Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. Information Technology Systems:

Computing and Communication: Party shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Party as part of this agreement. Options include, but are not limited to:

1. Party's provision of certified computing equipment, peripherals and mobile devices, on a separate Party's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

Intellectual Property/Work Product Ownership: All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement -- including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement, or are a result of the services required under this grant -- shall be considered "work for hire" and remain the property of the

State of Vermont, regardless of the state of completion unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30-days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Party (or subcontractor or sub-grantee), shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

Party shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State of Vermont.

If Party is operating a system or application on behalf of the State of Vermont, Party shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Party's materials.

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property.

Security and Data Transfers: Party shall comply with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Party of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Party to implement any required.

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. Party will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, Party shall securely delete data (including archival backups) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

Party, in the event of a data breach, shall comply with the terms of Section 6 above.

10. Other Provisions:

Environmental Tobacco Smoke. Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

2-1-1 Database: If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or contact information as well as accurate and up to date information to its database as requested. The "Inclusion/Exclusion" policy can be found at www.vermont211.org.

Voter Registration: When designated by the Secretary of State, Party agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

Drug Free Workplace Act: Party will assure a drug-free workplace in accordance with 45 CFR Part 76.

Lobbying: No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

AHS ATT. F 12.31.16

Appendix I – Required Forms
**Department of Vermont Health Access
Subcontractor Compliance Form**

Date: _____

Original Contractor/Grantee Name: _____ Contract/Grant #: _____

Subcontractor Name: _____

Scope of Subcontracted Services:

Is any portion of the work being outsourced outside of the United States? ☐ YES ☐ NO
(If yes, do not proceed)

All vendors under contract, grant, or agreement with the State of Vermont, are responsible for the performance and compliance of their subcontractors with the Standard State Terms and Conditions in Attachment C. This document certifies that the Vendor is aware of and in agreement with the State expectation and has confirmed the subcontractor is in full compliance (or has a compliance plan on file) in relation to the following:

- ☐ Subcontractor does not owe, is in good standing, or is in compliance with a plan for payment of any taxes due to the State of Vermont
- ☐ Subcontractor (if an individual) does not owe, is in good standing, or is in compliance with a plan for payment of Child Support due to the State of Vermont.
- ☐ Subcontractor is not on the State's disbarment list.

In accordance with State Standard Contract Provisions (Attachment C), the State may set off any sums which the subcontractor owes the State against any sums due the Vendor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in Attachment C.

Signature of Subcontractor

Date

Signature of Vendor

Date

Received by DVHA Business Office

Date

Required: Contractor cannot subcontract until this form has been returned to DVHA Contracts & Grants Unit.

EXHIBIT A REPORTING REQUIREMENTS

Contractor agrees to deliver requested reports to the State in the format designated by the State on the agreed upon schedule. Quarterly reports are due on the 15th day of the month following the end of the quarter. Contractor shall include year-to-date cumulative amounts in each quarterly report submitted. Quarterly reports with month-to-month breakdowns must show the total amounts for each month. Annual reports are due at the end of the first month following the prior year. Contractor will review reports with State via conference call or face to face to after delivery of each quarterly and annual report. This list of reports may be updated from time to time as determined by Contractor and the State. Reports requested by the State not listed below will be delivered after the reports are built and tested for reporting accuracy. In addition, the Contractor agrees to deliver any reports required by State in the format required by the State.

Quarterly Reports with Month-to-Month Breakdown*
I. PA Requests received by intake method (internet, fax, phone)
II. PA Requests approved/denied
III. PA turnaround statistics (PA process rate) including outliers by intake method
IV. Number of PA Requests where additional clinical information was requested
V. Average time between the receipt of clinical information and the decision on the request
VI. Number of PA Requests where a professional requesting PA asked for a discussion with a health care professional peer, including the average number of contacts to engage in this discussion.
VII. Call center metrics (total calls received/call answer rate/call abandon rate)
VIII. PA requests processed via predictive modeling capability and outcomes
IX. Savings and trend analysis
Quarterly Reports*
I. Predictive modeling Quality Control Audit Results (Monthly 10% review of all Pas processed via predictive modeling.)
II. Top referring doctors (studies requested/denial rate information)
III. Top performing providers (volume)
IV. PA denial rate results including rationales
V. PA requests processed via predictive modeling capability and outcomes
Annual Reports
I. Utilization Savings and Trending Analysis
II. Gold Card Program evaluation, analysis, and eligibility reporting
III. Vermont Provider Satisfaction – performed by an independent third-party administrator
IV. Total number of PA requests
As Requested by State
I. Ad Hoc reports
II. Origin of Request Report
Q1: July-September; Q2: October-December; Q3: January-March; Q4: April-June
* CY 2013 only: Q1& Q2 combined, covering August-December

EXHIBIT B
UTILIZATION MANAGEMENT DELEGATED FUNCTIONS & RESPONSIBILITIES

Responsibility	Contractor	State
Preauthorization of :		
• HiTech Radiology and Cardiac imaging	X	
Communications of Authorization Approval decisions to Members and Providers	X	
Communications of Adverse Determination decisions to Members and Providers	X	
First Level Appeals Process		X
Final Appeals Process		X
New Provider Orientation	X	
Oversight and Monitoring of Delegation		X
Gold Card evaluation, analysis, and eligibility reporting	X	
Gold Card eligibility criteria and notifications		X